



Free Special Education Resources, Consultation, Trainings Your Arizona Parent School Connection

Dispute Resolution: Mediation

When questions or concerns arise regarding your child's special education program, it is important to follow the chain-of-command when seeking answers or resolution. Effective communication is vital to developing those positive collaborative relationships. The Parent Information Network (PIN) Clearinghouse has a document that contains some strategies and information regarding the development of communication skills and it is appropriately titled, *The Importance of Good Communication Skills (SA05)*.

However when communication breaks down and the parents of a child with a disability and the school disagree about an educational decision(s) or placement, they may want to consider Mediation.

What is Mediation?

The Individuals with Disabilities Education Act (IDEA) mandates that states establish procedures to allow parties to resolve disputes involving any matter under IDEA through a mediation process. Special education mediation can be used to assist parents and schools in resolving disputes related to the identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE) to a child. It is available through the Arizona Department of Education, Exceptional Student Services (ADE/ESS) at no cost to the parent or school. Mediation is considered an informal process where an impartial third party, the trained mediator, assists parents and schools to reach an agreement regarding a child's special education program. It is completely voluntary and no matter who initiates the request for mediation, the other party must agree to participate.

How do you request Mediation?

The parent or the school representative contacts the ADE/ESS and requests mediation. The request can be made via e-mail, letter, and/or a phone call to the Dispute Resolution Unit at ADE/ESS. To simplify the process, Dispute Resolution has a form on their website that the requestor can use. It can be found at

www.azed.gov/ess/dispute/mediation. The mediation request should include the following information:

- The requestor's name and contact information, including address and phone number;
- The student's name, school, and school district of attendance; and
- A brief description of why you are requesting mediation.

Once the request is received, ADE/ESS staff will contact the other party to see if they are willing. If both parties agree, ADE/ESS staff will then explain the mediation process and contact a randomly selected mediator.

Who is the Mediator?



The ADE/ESS is responsible for maintaining a list of trained mediators and monitoring the effectiveness of the mediation system. Mediators are impartial third parties trained to encourage open communication between parties, identify points of agreement, and facilitate resolution. They are private contractors hired by ADE/ESS. Before they are hired, they must proof that they have completed a 40 hour course in mediation and have 20 hours of hands-on mediation experience. Mediators are to remain unbiased and do not act as an advocate or a legal advisor for either the parent or the school. The mediator is not an employee of the Arizona Department of Education and cannot be employed by the school or school district involved in the education of the child.

What does the Mediator do?

Once the mediator is randomly selected, he/she contacts both parties to:

- Schedule mediation;
- Clarify the issues;
- Gather necessary information;
- Explain the mediation process; and
- Identify the participants for both parties (generally a maximum of three for each party).

It is **not** recommended that either party have legal representation present for the mediation; however if either party intends to have an attorney present, they must give notice to the other party in advance of the mediation. Parents may want to invite a family member, support coordinator, or counselor. The school will invite staff directly related to the issue and/or those responsible for carrying out the mediation agreement.

The mediation session will be scheduled as soon as possible and at a location convenient for all parties. Parents should feel comfortable offering meeting location options. Once the date and location has been agreed upon, the mediator then contacts ADE/ESS and informs them of the date, location, issues, and parties involved.

What must both parties agree to?

Both parties involved in mediation must agree to approach the mediation in good faith with the intention of reaching an agreement. Because the process is considered an informal problem-solving process, participants are encouraged to communicate directly with each other while working toward a mutually agreeable solution, which may involve compromise. Participants should conduct themselves in a respectful manner at all times and may request a break if they need an opportunity to collect their thoughts.

Both parties need to ensure that they have appropriated a sufficient amount of time to complete the mediation process. Parents may need to secure child care and school staff should not schedule other meetings or appointments. Typically, mediation sessions last four to eight hours.

What happens during mediation?

The mediator will review the guidelines for the mediation session and ensure that all participants understand them. He/she will identify the nature of the disagreement and the points of agreement. Once the historical information regarding the nature of the disagreement is shared, the mediator may limit discussions to current or future aspects of the situation in an effort to move towards a resolution.

Participants are provided an opportunity to present their viewpoint and any relevant information and/or documentation. It is vital to the process that both parties feel free to ask for clarification whenever material is presented or a point of discussion is not understood.

If necessary, the mediator may caucus (meet privately) with both parties during the mediation session. He/she must maintain confidentiality of those discussions, unless the parties otherwise agree. Either party may meet separately with the mediator if it is necessary, should sensitive information need to be shared or private concerns expressed.

Once an agreement is reached, the mediator writes a specific, concise mediation agreement with participation from both parties. The agreement is then signed by and a copy provided to both parties. The original agreement is sent to ADE/ESS to be maintained in confidential files. Participants will be given an evaluation to be completed and mailed to ADE/ESS.

The mediator may terminate the mediation if an agreement cannot be reached or if the participants do not follow the agreed upon mediation guidelines.

Both parties will then need to schedule an individualized education program (IEP) meeting to make the agreed upon changes to the child's IEP. The mediation agreement, signed by both parties, is a legally binding agreement and clearly states that all discussions that occurred during the mediation process remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. For more information, visit Dispute Resolution online at www.azed.gov/ess/dispute or contact your regional PIN Specialist by calling (877) 230-PINS (7467).

References

Arizona Department of Education, Exceptional Student Services. 2008. *Special Education Mediation System*. Phoenix, AZ: Author. www.azed.gov/ess/dispute/mediation

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